
A BILL FOR AN ACT

RELATING TO MORTGAGE INDUSTRY REGULATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to make various
2 amendments to the mortgage loan originators law, chapter 454F,
3 Hawaii Revised Statutes, and the mortgage servicers law, chapter
4 454M, Hawaii Revised Statutes, by: increasing the clarity and
5 consistency of the two chapters, which regulate related
6 industries, including adding definitions and updating references
7 to federal regulations; moving mortgage servicer provisions that
8 currently appear in chapter 454F, Hawaii Revised Statutes, to
9 chapter 454M, Hawaii Revised Statutes; and deleting the mortgage
10 loan servicer loan modification license under chapter 454F,
11 Hawaii Revised Statutes, as the need for this license has been
12 eliminated by amendments to chapter 454M, Hawaii Revised
13 Statutes.

14 SECTION 2. Section 454F-1, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By adding four new definitions to be appropriately
17 inserted and to read:

18 "C.F.R." means the Code of Federal Regulations.



1 "Consumer Financial Protection Bureau" means the bureau of
2 consumer financial protection established under title 12 United
3 States Code chapter 53, subchapter V.

4 "Dwelling" means a residential structure or mobile home
5 that contains one to four family housing units or individual
6 units of condominiums or cooperatives.

7 "Mortgage servicer" means a person licensed or required to
8 be licensed under chapter 454M."

9 2. By amending the definitions of "borrower", "federal
10 banking agencies", "licensee", "residential mortgage loan", and
11 "residential mortgage loan modification" to read:

12 "Borrower" means [a person who has applied for] the
13 obligor, maker, cosigner, or [obtained] guarantor under a
14 residential mortgage loan [from or through a licensed mortgage
15 loan originator or mortgage loan originator company or from a
16 person required to be licensed as a mortgage loan originator or
17 mortgage loan originator company under this chapter.] agreement.
18 For purposes of this chapter, a borrower is included in the term
19 consumer.

20 "Federal banking agencies" means the Board of Governors of
21 the Federal Reserve System, the Comptroller of the Currency,



1 ~~[the Office of Thrift Supervision,]~~ the National Credit Union
2 Administration, and the Federal Deposit Insurance Corporation.

3 "Licensee" means ~~[a mortgage loan originator, a mortgage~~
4 ~~loan originator company, a mortgage servicer company, unless~~
5 ~~exempt under chapter 454M, or]~~ a person who is licensed or
6 required to be licensed under this chapter. Licensee does not
7 include an exempt registered mortgage loan originator, exempt
8 sponsoring mortgage loan originator company, or nonprofit
9 organization as defined by this section.

10 "Residential mortgage loan" or ~~["residential mortgage~~
11 ~~transaction"]~~ "mortgage loan" means any loan primarily for
12 personal, family, or household use that is secured by a
13 mortgage, deed of trust, or other equivalent consensual security
14 interest on a dwelling ~~[as defined in section 103(v) of the~~
15 ~~Truth in Lending Act, 15 United States Code section 1602]~~ or
16 residential real estate~~[-]~~ upon which is constructed or intended
17 to be constructed a dwelling, and includes refinancings, reverse
18 mortgages, home equity lines of credit, and other first and
19 additional lien loans that meet the qualifications listed in
20 this definition.



1 "Residential [~~mortgage~~] loan modification" or "loan
2 modification means [+

3 ~~(1) Modification of]~~ a temporary or permanent change to
4 the terms of a borrower's existing residential
5 mortgage [loans which generally includes a change in
6 interest, principal, or term of loan; or

7 ~~(2) The processing of the approval of loan assumptions.]~~
8 loan agreement, mutually agreed to between a borrower
9 and a lender.

10 [~~"Residential mortgage loan modification" does not include~~
11 ~~origination of mortgage loans.] "~~

12 3. By deleting the definition of "mortgage servicer
13 company".

14 [~~"Mortgage servicer company" means a mortgage servicer~~
15 ~~company licensed, or required to be licensed, under chapter 454M~~
16 ~~that conducts mortgage loan origination activity."]~~

17 SECTION 3. Section 454F-1.5, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) All mortgage loan originators, mortgage loan
20 originator companies, exempt registered mortgage loan
21 originators, exempt sponsoring mortgage loan originator



1 companies, nonprofit organizations, [~~mortgage-servicer~~
2 ~~companies,~~] and every other person in this State that originates
3 a residential mortgage loan, unless exempt under section 454F-2,
4 shall register with NMLS."

5 SECTION 4. Section 454F-1.6, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "§454F-1.6 Presumption of control. An individual is
8 presumed to control a mortgage loan originator company [~~or a~~
9 ~~mortgage-servicer-company~~] if that individual is a director,
10 general partner, managing member, or executive officer who
11 directly or indirectly has the right to vote ten per cent or
12 more of a class of voting securities or has the power to sell or
13 direct the sale of ten per cent or more of a class of voting
14 securities of that [~~mortgage loan originator company or mortgage~~
15 ~~servicer-company.~~] licensee or applicant."

16 SECTION 5. Section 454F-2, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§454F-2 Exemptions. This chapter shall not apply to the
19 following:

20 (1) An exempt registered mortgage loan originator when
21 acting for an insured depository institution or an



1 institution regulated by the Farm Credit
2 Administration[+], except as otherwise provided by
3 this chapter;

4 (2) A licensed attorney who negotiates the terms of a
5 residential mortgage loan on behalf of a client as an
6 ancillary matter to the attorney's representation of
7 the client unless the attorney is compensated by a
8 lender, a mortgage loan originator company, or other
9 mortgage loan originator or by an agent of a lender,
10 mortgage loan originator company, or other mortgage
11 loan originator;

12 (3) A person or entity that only performs real estate
13 brokerage activities and is licensed or registered by
14 the State unless the person or entity is compensated
15 by a lender, a mortgage loan originator company, or
16 other mortgage loan originator or by an agent of the
17 lender, mortgage loan originator company, or other
18 mortgage loan originator;

19 (4) A person or entity solely involved in extensions of
20 credit relating to timeshare plans, as the term is



defined in title 11 United States Code section
101(53D);

(5) An exempt sponsoring mortgage loan originator company
as defined by this chapter except as otherwise
provided by this chapter;

(6) An insured depository institution;

(7) An institution regulated by the Farm Credit
Administration;

(8) Employees of government agencies or of housing finance
agencies who act as mortgage loan originators; or

~~[(9) A mortgage servicer company that is exempt from
chapter 454M, pursuant to section 454M-3; or~~

~~[(10)]~~ (9) A seller of real property who offers or
negotiates terms of a residential mortgage loan that
is financed by the seller and secured by the seller's
own real property; provided that:

(A) The seller is a person, estate, or trust that
transacts three or fewer residential mortgage
loans in one calendar year;

(B) The seller is not a loan originator for purposes
of the loan originator qualification requirements



1 in 12 [~~Code of Federal Regulations~~] C.F.R.

2 section 1026.36(f) and (g);

3 (C) The seller has not constructed or acted as the
4 construction contractor for the residence on the
5 property in the ordinary course of the seller's
6 business;

7 (D) The interest rate for the loan does not exceed
8 the State's usury limit; provided that the
9 exemptions from usury specified in section 478-8
10 shall not apply to transactions subject to this
11 paragraph;

12 (E) The seller shall provide to the buyer the terms
13 of the financing including:

14 (i) A current title search including any liens
15 against the property;

16 (ii) The interest rate;

17 (iii) Monthly principal and interest payments;

18 (iv) Any prepayment penalty;

19 (v) Any late payment charges;

20 (vi) The payment schedule;



(vii) The total amount of interest that the mortgagor will pay over the term of the loan expressed as a percentage of the loan amount;

(viii) A calculation of projected aggregate monthly payments including principal and interest;

(ix) Estimated closing costs if closing costs are included in loan costs and estimated cash to close if closing costs are not included in loan costs. For purposes of this paragraph, closing costs shall include recording fees, transfer taxes, prepaid costs such as homeowner's insurance premiums or property taxes, and appraisal costs charged to the mortgagor;

(x) The seller's contact information including name, address, phone number, electronic mail address, and alternate contact information to the extent available; and

(xi) A statement that the seller will acquire a security interest in the buyer's dwelling



1 and that the buyer may lose the dwelling in
2 the event of a loan default;

3 (F) The seller shall provide a disclaimer, to be
4 initialed by the buyer, which states, "BUYER
5 ACKNOWLEDGES RECEIVING FINANCING FROM THE SELLER
6 IN THIS TRANSACTION AND GRANTING THE SELLER A
7 MORTGAGE. THIS CAN HAVE SERIOUS CONSEQUENCES
8 SHOULD BUYER FAIL TO MAKE ANY PAYMENTS INCLUDING
9 BUT NOT LIMITED TO FORECLOSURE AND THE LOSS OF
10 BUYER'S PROPERTY. THEREFORE, IT IS IMPORTANT
11 THAT BUYER UNDERSTANDS ALL FINANCING TERMS AND
12 OBLIGATIONS AND OBTAINS PROFESSIONAL EXPERT
13 ADVICE TO THE EXTENT NECESSARY TO ENSURE BUYER IS
14 FULLY ADVISED IN THIS MATTER."; and

15 (G) A residential mortgage loan shall be recorded
16 with the land court or bureau of conveyances as
17 applicable."

18 SECTION 6. Section 454F-3, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Effective January 1, 2011, or such later date
21 approved by the United States Department of Housing and Urban



1 Development pursuant to the authority granted under Public Law
2 110-289, section 1508(e), title 12 United States Code section
3 5107(e), a person, unless specifically exempted from this
4 chapter, shall not engage in the business of a mortgage loan
5 originator or mortgage loan originator company with respect to
6 any dwelling located in this State without first obtaining and
7 maintaining annually, a license under this chapter. Each
8 licensed mortgage loan originator~~[,]~~ or mortgage loan originator
9 company~~[, or mortgage servicer company]~~ shall register with and
10 maintain a valid unique identifier issued by NMLS and shall
11 submit to NMLS any reports that shall be in a form and contain
12 information as NMLS may require."

13 SECTION 7. Section 454F-5, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

15 "(a) The commissioner shall not issue a license pursuant
16 to this chapter unless the commissioner makes at a minimum the
17 following findings:

18 (1) The applicant, ~~[if]~~ or in the case of an applicant
19 that is not an individual, each of the applicant's
20 control persons, executive officers, directors,
21 general partners, and managing members, has never had



1 a mortgage loan originator or a mortgage loan
2 originator company license revoked in any
3 jurisdiction; provided that a subsequent formal
4 vacation of a revocation shall not be deemed a
5 revocation;

6 (2) The applicant, ~~[if]~~ or in the case of an applicant
7 that is not an individual, each of the applicant's
8 control persons, executive officers, directors,
9 general partners, and managing members, has not been
10 convicted of, or pled guilty or nolo contendere, or
11 been granted a deferred acceptance of a guilty plea
12 under federal law or under chapter 853 to a felony in
13 a domestic, foreign, or military court:

14 (A) During the seven-year period preceding the date
15 of the application for licensing and
16 registration; or

17 (B) At any time preceding the date of application, if
18 the felony involved an act of fraud, dishonesty,
19 breach of trust, or money laundering;

20 provided that any pardon of a conviction shall not be
21 deemed a conviction for purposes of this section;



1 (3) The applicant, [~~if~~] or in the case of an applicant
2 that is not an individual, each of the applicant's
3 control persons, executive officers, directors,
4 general partners, and managing members, has
5 demonstrated financial responsibility, character, and
6 general fitness to command the confidence of the
7 community and to warrant a determination that the
8 applicant shall operate honestly, fairly, and
9 efficiently pursuant to this chapter. For purposes of
10 this paragraph, a person is not financially
11 responsible when the person has shown a disregard in
12 the management of the person's financial condition. A
13 determination that a person has shown a disregard in
14 the management of the person's financial condition may
15 be based on:

- 16 (A) Current outstanding judgments, except judgments
17 solely as a result of medical expenses;
18 (B) Current outstanding tax liens or other government
19 liens and filings;
20 (C) Foreclosures within the past three years; and



1 (D) A pattern of seriously delinquent accounts within
2 the past three years;

3 (4) The applicant, [~~if~~] or in the case of an applicant
4 that is not an individual, each of the applicant's
5 control persons, executive officers, directors,
6 general partners, and managing members, has not been
7 convicted of, plead guilty or nolo contendere to, or
8 been granted a deferred acceptance of a guilty plea
9 under federal law or chapter 853 to any misdemeanor
10 involving an act of fraud, dishonesty, breach of
11 trust, or money laundering;

12 (5) The applicant, [~~if~~] or in the case of an applicant
13 that is not an individual, each individual mortgage
14 loan originator who is employed by the mortgage loan
15 originator company or who provides exclusive services
16 to the applicant as a mortgage loan originator, has
17 completed the pre-licensing education requirement
18 described in section 454F-6;

19 (6) The applicant, [~~if~~] or in the case of an applicant
20 that is not an individual, each individual mortgage
21 loan originator who is employed by the mortgage loan



1 originator company or who provides exclusive services
2 to the applicant as a mortgage loan originator, has
3 passed a written test that meets the test requirements
4 in section 454F-7; and

5 (7) The applicant has met the mortgage loan recovery fund
6 requirement as required in section 454F-41."

7 SECTION 8. Section 454F-6, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) An applicant for licensure as a mortgage loan
10 originator shall complete at least twenty hours of pre-licensing
11 education approved in accordance with subsection (b) that
12 includes:

13 (1) Three hours of federal law and regulations and three
14 hours of ~~[state]~~ the State's law and rules;

15 (2) Three hours of ethics, ~~[that]~~ which shall include
16 instruction on fraud, consumer protection, and fair
17 lending issues; and

18 (3) Two hours of training related to lending standards for
19 the nontraditional mortgage product marketplace.

20 Upon completion of the pre-licensing education, an individual
21 has up to twelve months to submit an application for licensure



1 as a mortgage loan originator. An individual who submits an
2 application after the twelve months have expired will be
3 required to repeat the pre-licensing education requirements."

4 SECTION 9. Section 454F-7, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) A written test shall not be treated as a qualified
7 written test for purposes of subsection (a) unless the test
8 adequately measures the applicant's knowledge and comprehension
9 in appropriate subject areas, including:

10 (1) Ethics;

11 (2) Federal law and regulations pertaining to mortgage
12 origination;

13 (3) ~~[State]~~ The State's law and rules pertaining to
14 mortgage origination; and

15 (4) Federal and ~~[state]~~ the State's law, rules, and
16 regulations, including instruction on fraud, consumer
17 protection, the nontraditional mortgage marketplace,
18 and fair lending issues."

19 SECTION 10. Section 454F-8, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§454F-8 Standards for license renewal. (a) The minimum
2 standards for license renewal for mortgage loan originators
3 shall include the following:

4 (1) The mortgage loan originator continues to meet the
5 minimum standards for licensure under section 454F-5;

6 (2) The mortgage loan originator has satisfied the annual
7 continuing education requirements in section 454F-9
8 prior to requesting renewal; and

9 (3) The mortgage loan originator has paid all required
10 fees for renewal of the license.

11 (b) The minimum standards for license renewal for mortgage
12 loan originator companies shall include the following:

13 (1) The mortgage loan originator company continues to meet
14 the minimum standards for licensure established
15 pursuant to section 454F-5;

16 (2) The mortgage loan originator company's qualified
17 individual and every branch manager have satisfied the
18 minimum standards for license renewal;

19 (3) The mortgage loan originator company has paid all
20 required fees for renewal of the license; and



1 (4) The mortgage loan originator company is registered
2 with the business registration division of the
3 department of commerce and consumer affairs.

4 ~~[(c) The minimum standards for license renewal for a~~
5 ~~mortgage servicer company shall include the following:~~

6 ~~(1) The mortgage servicer company continues to meet the~~
7 ~~minimum standards for licensure established pursuant~~
8 ~~to section 454F-5;~~

9 ~~(2) The mortgage servicer company has paid all required~~
10 ~~fees for renewal of the license; and~~

11 ~~(3) The mortgage servicer company is registered with the~~
12 ~~business registration division of the department of~~
13 ~~commerce and consumer affairs.~~

14 ~~(d)]~~ (c) The license of a mortgage loan originator~~[-]~~ or
15 mortgage loan originator company~~[-, or mortgage servicer company]~~
16 that fails to satisfy the minimum standards for license renewal
17 shall expire. The commissioner may adopt procedures for the
18 reinstatement of expired licenses consistent with section
19 454F-8.5 and the standards established by NMLS."

20 SECTION 11. Section 454F-9, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) Each year, a licensed mortgage loan originator shall
2 complete at least eight hours of education approved in
3 accordance with subsection (b) that shall include:

4 (1) Three hours of federal law and regulations;

5 (2) One hour of [state] the State's law and rules;

6 (3) Two hours of ethics that shall include instruction on
7 fraud, consumer protection, and fair lending issues;
8 and

9 (4) Two hours of training related to lending standards for
10 the nontraditional mortgage product marketplace."

11 SECTION 12. Section 454F-10, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "~~§454F-10~~ **Authority to require license.** In addition to
14 any other duties imposed upon the commissioner, the commissioner
15 shall require mortgage loan originators[7] and mortgage loan
16 originator companies[7, ~~and mortgage servicer companies~~] to be
17 licensed and registered through NMLS. The commissioner is
18 authorized to participate in NMLS. The commissioner may
19 establish by rule pursuant to chapter 91, requirements for
20 mortgage loan originators[7] and mortgage loan originator
21 companies, [~~and mortgage servicer companies~~7] including:



1 (1) Background checks of:

2 (A) Criminal history through fingerprint or other
3 databases;

4 (B) Civil or administrative records;

5 (C) Credit history; and

6 (D) Any other source deemed necessary by NMLS;

7 (2) Fees to apply for or renew licenses through NMLS;

8 (3) The setting or resetting as necessary of license
9 renewal and reporting dates;

10 (4) Requirements for amending or surrendering a license;
11 and

12 (5) Any other activity the commissioner deems necessary to
13 participate in NMLS."

14 SECTION 13. Section 454F-14, Hawaii Revised Statutes, is
15 amended by amending subsection (f) to read as follows:

16 "(f) This section shall not apply to information or
17 material relating to the employment history of, and publicly
18 adjudicated disciplinary and enforcement actions against,
19 mortgage loan originators[~~7~~] and mortgage loan originator
20 companies[~~7, and mortgage servicer companies~~] that are included
21 in NMLS for access by the public."



SECTION 14. Section 454F-17, Hawaii Revised Statutes, is amended to read as follows:

"§454F-17 Prohibited practices. It shall be a violation of this chapter for a licensee or person subject to this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice related to mortgage loan origination activities toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into any contract with a borrower or an applicant for a residential mortgage loan that provides in substance that the person or individual subject to this chapter may earn a fee or commission through "best efforts" to obtain a residential mortgage loan even though no loan is actually obtained for the borrower[?] or applicant for a residential mortgage loan;



- 1 (5) Solicit, advertise, or enter into a contract for
2 specific interest rates, points, or other financing
3 terms unless the terms are actually available at the
4 time of soliciting, advertising, or contracting;
- 5 (6) Conduct any business covered by this chapter without
6 holding a valid license as required under this
7 chapter, or assist or aid and abet any person in the
8 conduct of business under this chapter without a valid
9 license as required under this chapter;
- 10 (7) Fail to make disclosures as required by this chapter
11 and any other applicable state or federal law
12 including rules or regulations adopted pursuant to
13 state or federal law;
- 14 (8) Fail to comply with this chapter or any order or rule
15 issued or adopted under the authority of this chapter,
16 or fail to comply with any other state or federal law,
17 including the rules and regulations adopted pursuant
18 to state or federal law applicable to any business
19 authorized or conducted pursuant to this chapter;
- 20 (9) Make, in any manner, any false or deceptive statement
21 or representation, including with regard to the rates,



1 points, or other financing terms or conditions for a
2 residential mortgage loan, or engage in bait and
3 switch advertising;

4 (10) Negligently or knowingly make any false statement or
5 provide any misleading information or knowingly and
6 wilfully make any omission of material fact in
7 connection with any information or reports filed with
8 a governmental agency or NMLS, including an
9 application for a license under this chapter, or in
10 connection with any examination or investigation
11 conducted by the commissioner or another government
12 agency;

13 (11) Make any payment, threat, or promise, directly or
14 indirectly, to any person for the purposes of
15 influencing the independent judgment of the person in
16 connection with a residential mortgage loan, or make
17 any payment, threat, or promise, directly or
18 indirectly, to any appraiser of a property for the
19 purpose of influencing the independent judgment of the
20 appraiser with respect to the value of a property;



1 (12) Cause or require a borrower to obtain property
2 insurance coverage in an amount that exceeds the
3 replacement cost of the improvements as established by
4 the property insurer;

5 (13) Fail to truthfully account for moneys belonging to a
6 party to a residential mortgage loan [~~transaction~~];

7 (14) Deliver a misleading or deceptive communication or
8 advertisement, whether written, electronic, or oral,
9 when marketing or soliciting a residential mortgage
10 loan; provided that:

11 (A) A communication or advertisement that uses the
12 name or trademark of a financial institution as
13 defined in section 412:1-109 or its affiliates or
14 subsidiaries, or infers that the communication or
15 advertisement is from, endorsed by, is related
16 to, or is the responsibility of the financial
17 institution is a misleading or deceptive
18 communication;

19 (B) Advertising that a specific interest rate,
20 points, or financial terms are available when the
21 rates, points, or financial terms are not



1 actually available is a misleading or deceptive
2 communication;

3 (15) Fill in or complete any blank on a final residential
4 mortgage loan application that requests material
5 information including financial information without
6 adequate supporting documentation provided by the
7 borrower;

8 (16) Fill in or complete any blank on any mortgage or note
9 evidencing or securing the residential mortgage loan
10 which relates to the amount, interest rate, term, or
11 monthly payment of the residential mortgage loan;

12 (17) Originate a residential mortgage loan based primarily
13 on the current market value of the borrower's
14 collateral rather than on the borrower's ability to
15 repay the loan according to its terms; provided that
16 the sale of the property is made to a bona fide buyer;
17 and provided further that this paragraph shall not
18 apply to a reverse mortgage as defined under title 12
19 [~~Code of Federal Regulations~~] C.F.R. section [~~226.33,~~
20 1026.33;



- 1 (18) Advertise terms of a residential mortgage loan in
2 violation of [~~section 226.16~~] title 12 C.F.R. section
3 1026.16 or [~~226.24 of Regulation Z of the Board of~~
4 ~~Governors of the Federal Reserve System;~~] 1026.24; or
5 (19) Encourage a borrower to misrepresent, inflate, or
6 fabricate the source or amount of a borrower's actual
7 income or assets in the application or underwriting
8 process for a residential mortgage loan."

9 SECTION 15. Section 454F-22, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "§454F-22 Mortgage loan originator, mortgage loan
12 originator company, exempt sponsoring mortgage loan originator
13 company, and nonprofit [~~organizations, and mortgage servicer~~
14 ~~company~~] organization fees. (a) Except as provided in
15 subsection (b), a mortgage loan originator shall pay the
16 following fees to obtain and maintain a valid mortgage loan
17 originator license:

- 18 (1) Initial application fee of \$600;
19 (2) Annual license renewal fee of \$350;
20 (3) Reinstatement fee of \$100;
21 (4) Late fee of \$25 per day; and



(5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91.

(b) A sole proprietorship mortgage loan originator shall pay the following fees to obtain and maintain a valid sole proprietor mortgage loan originator license:

(1) Initial application fee of \$35;

(2) Annual license renewal fee of \$35;

(3) Reinstatement fee of \$100;

(4) Late fee of \$25 per day; and

(5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91.

(c) A mortgage loan originator company shall pay the following fees to maintain a valid mortgage loan originator company license or branch license:

(1) Fees payable for a principal office of a mortgage loan originator company:

(A) Initial application fee of \$900;

(B) Processing fee of \$35 for each control person;

(C) Annual license renewal fee of \$600;



- 1 (D) Reinstatement fee of \$100;
- 2 (E) Late fee of \$25 per day; and
- 3 (F) Criminal background check fee of \$35, or of an
- 4 amount determined by the commissioner by rule
- 5 pursuant to chapter 91, for each control person,
- 6 executive officer, director, general partner, and
- 7 manager; and
- 8 (2) Fees payable for each branch office of a mortgage loan
- 9 originator company:
- 10 (A) Initial application fee of \$250;
- 11 (B) Annual license renewal fee of \$100;
- 12 (C) Reinstatement fee of \$100; and
- 13 (D) Late fee of \$25 per day.
- 14 (d) An exempt sponsoring mortgage loan originator company
- 15 shall pay the following fees to maintain a valid registration in
- 16 NMLS:
- 17 (1) Initial registration fee of \$200;
- 18 (2) Annual registration renewal fee of \$150; and
- 19 (3) Late fee of \$25 per day.



1 (e) A nonprofit organization shall pay the following fees
2 to maintain a valid registration as a nonprofit organization in
3 NMLS:

- 4 (1) Initial registration fee of \$200;
5 (2) Annual registration renewal fee of \$150; and
6 (3) Late fee of \$25 per day.

7 ~~[(f) A mortgage servicer company shall pay for a principal~~
8 ~~office the following fees to maintain a valid mortgage loan~~
9 ~~servicer loan modification license:~~

- 10 ~~(1) Initial application fee of \$600;~~
11 ~~(2) Annual license renewal fee of \$600;~~
12 ~~(3) Reinstatement fee of \$100;~~
13 ~~(4) Late fee of \$25 per day; and~~
14 ~~(5) Criminal background check fee of \$35, or of an amount~~
15 ~~determined by the commissioner by rule pursuant to~~
16 ~~chapter 91, for each control person, executive~~
17 ~~officer, director, general partner, and managing~~
18 ~~member.~~

19 ~~(g)]~~ (f) In addition to fees charged by NMLS, a licensee
20 shall pay to the commissioner a fee of \$100 for each of the



1 following amendments to information provided to NMLS that
2 require the review of the commissioner:

- 3 (1) Change of physical location or mailing address for
4 branch office or principal place of business;
- 5 (2) Addition or deletion of a "d/b/a" assignment;
- 6 (3) Change of mortgage loan originator's sponsor;
- 7 (4) Change of qualified individual;
- 8 (5) Change of branch manager; and
- 9 (6) Change of mortgage loan originator company's legal
10 name.

11 The commissioner, upon a showing of good cause, may waive any
12 fee set forth in this subsection.

13 ~~[(h)]~~ (g) The fees established by this section are
14 nonrefundable and are in addition to any fees established and
15 charged by NMLS, an approved educational course provider, an
16 approved educational testing provider, a law enforcement agency
17 for fingerprints and background checks, or a credit reporting
18 agency used by NMLS.

19 ~~[(i)]~~ (h) The commissioner may establish, by rule pursuant
20 to chapter 91, any other fees or charges necessary for the
21 administration of this chapter."



SECTION 16. Section 454F-24, Hawaii Revised Statutes, is amended to read as follows:

"§454F-24 [~~Mortgage servicer companies;~~] Limited exemption for mortgage loan originators[-] employed by mortgage servicers.

An employee who performs mortgage loan originator activities for a mortgage servicer [~~company~~] is exempt from registration and licensure as a mortgage loan originator; provided that:

(1) The employee's actions are part of the employee's duties as an employee of the mortgage servicer [~~company~~]; and

(2) The [~~employee provides~~] employee's mortgage loan originator services [only with respect] are limited to [a] residential [mortgage] loan [modification-] modifications and processing the approval of loan assumptions."

SECTION 17. Section 454F-41, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) In addition to application fees and any fees required by NMLS, a licensee shall pay to the division a mortgage loan recovery fund fee as follows for deposit in the mortgage loan recovery fund:



1 (1) The sum of \$300 for each principal office location of
2 a mortgage loan originator company [~~or mortgage~~
3 ~~servicer company~~];

4 (2) The sum of \$250 for each branch office location of a
5 mortgage loan originator company; and

6 (3) The sum of \$200 for each mortgage loan originator.

7 (c) Upon application for renewal of a license under this
8 chapter, a licensee shall pay, in addition to the licensee's
9 license renewal fee and fees required by NMLS, a mortgage loan
10 recovery fund fee as follows for deposit in the mortgage loan
11 recovery fund:

12 (1) The sum of \$200 for each principal office location of
13 a mortgage loan originator company [~~or a mortgage~~
14 ~~servicer company~~];

15 (2) The sum of \$100 for each branch office location of a
16 mortgage loan originator company; and

17 (3) The sum of \$100 for each mortgage loan originator.

18 Mortgage loan recovery fees collected pursuant to this
19 subsection shall be refundable upon the denial of a license
20 renewal by the commissioner."



1 SECTION 18. Section 454M-1, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding two new definitions to be appropriately
4 inserted and to read:

5 "Dwelling" means a residential structure or mobile home
6 that contains one to four family housing units or individual
7 units of condominiums or cooperatives.

8 "Residential real estate" means any real property located
9 in this State, upon which a dwelling is constructed or intended
10 to be constructed."

11 2. By amending the definitions of "borrower", "loan
12 modification", "person", and "residential mortgage loan" to
13 read:

14 "Borrower" means the obligor, maker, cosigner, or
15 guarantor under a mortgage loan agreement. For purposes of this
16 chapter, a borrower ~~[may also be referred to as a]~~ is included
17 in the term consumer.

18 "~~[Loan]~~ Residential loan modification" or "loan
19 modification" means a temporary or permanent change to the terms
20 of a borrower's existing residential mortgage loan agreement,
21 mutually agreed to between a borrower and a lender.



1 "Person" means an individual, sole proprietorship,
2 partnership, corporation, limited liability company, limited
3 liability partnership, or other association[~~, or other~~
4 ~~organization.~~] of individuals, however organized.

5 "Residential mortgage loan" or "mortgage loan" means [a
6 ~~mortgage loan, home equity loan, or reverse mortgage~~] any
7 loan[~~]~~ primarily for personal, family, or household use that is
8 secured by a [~~first or subordinate lien on residential real~~
9 ~~property located in Hawaii, including a refinancing of any~~
10 ~~secured loan on residential real property located in Hawaii,~~
11 ~~upon which:~~

12 ~~(1) There is or will be constructed a structure or~~
13 ~~structures designed principally for occupancy by one~~
14 ~~to four families, including individual units of~~
15 ~~condominiums and cooperatives; or~~

16 ~~(2) A manufactured home is located or will be placed on~~
17 ~~the real property, using proceeds of the loan.]~~
18 mortgage, deed of trust, or other consensual security
19 interest on a dwelling or residential real estate and
20 includes refinancings, reverse mortgages, home equity
21 lines of credit, and other first and additional lien



1 loans that meet the qualifications listed in this
2 definition."

3 SECTION 19. Section 454M-2, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "**§454M-2 License required.** (a) No person except those
6 exempted under this chapter shall engage in the business of
7 mortgage servicing without a license as provided in this
8 chapter.

9 (b) No person shall engage in the business of mortgage
10 servicing in this State unless the person providing services has
11 a physical presence in the State pursuant to section
12 454M-5(b)(6).

13 ~~[(c) No person licensed as a mortgage servicer shall~~
14 ~~provide mortgage loan modifications or any other services that~~
15 ~~would require licensing pursuant to chapter 454F without first~~
16 ~~complying with the licensure requirements under chapter 454F.] "~~

17 SECTION 20. Section 454M-4, Hawaii Revised Statutes, is
18 amended as follows:

19 1. By amending subsection (a) to read:

20 "(a) The commissioner may approve a license or license
21 renewal application upon receipt of a complete application;



1 provided that an applicant for licensure shall file an
2 application on a form prescribed by NMLS or by the commissioner
3 and shall pay an application fee of \$675. Each license shall
4 expire on December 31 of each calendar year unless the license is
5 renewed. A licensee may apply for license renewal by filing a
6 renewal statement on a form prescribed by NMLS or by the
7 commissioner and paying a renewal fee of [~~\$425,~~] \$600, at least
8 four weeks prior to December 31. The minimum standards for
9 license renewal shall include the following:

- 10 (1) The licensee continues to meet the minimum standards
11 for licensure established pursuant to this section;
- 12 (2) The licensee has paid all required fees for renewal of
13 the license; and
- 14 (3) The licensee is registered with the business
15 registration division of the department of commerce
16 and consumer affairs.

17 All fees paid pursuant to this section, including fees paid in
18 connection with an application, shall be nonrefundable. No fee
19 paid pursuant to this section shall be prorated if the license
20 is surrendered, revoked, or suspended prior to the expiration of
21 the period for which it was approved."



2. By amending subsection (g) to read:

"(g) A mortgage servicer licensee may change the licensee's name or the address of any of the licensee's offices specified on the most recent filing with NMLS if:

(1) The licensee files the change with NMLS and, in the case of the principal office or a branch office, provides directly to the commissioner a bond rider or endorsement, or addendum, as applicable, to any bond on file with the commissioner that reflects the new name or address of the principal office or branch office;
[and]

(2) The commissioner approves the change in writing[~~-~~]; and

(3) The mortgage servicer pays to the commissioner a fee of \$100 and any fees charged by NMLS."

3. By amending subsection (j) to read:

"(j) Before a mortgage servicer's license becomes effective, the applicant or licensee shall file with the commissioner a surety bond written by a surety authorized to write surety bonds in this State, covering the applicant or ~~[licensee's principal office and any branch office from which the applicant or licensee acts as a mortgage servicer,~~ licensee in a



1 penal sum of \$100,000. No mortgage servicer licensee shall act
2 as a mortgage servicer in this State without maintaining the
3 surety bond required by this section.

4 The surety bond shall be:

5 (1) In a form approved by the attorney general of this
6 State; and

7 (2) Conditioned upon the mortgage servicer licensee
8 faithfully performing any and all written agreements or
9 commitments with or for the benefit of borrowers and
10 mortgagees, truly and faithfully accounting for all
11 funds received from a borrower or mortgagee in the
12 person's capacity as a mortgage servicer, and
13 conducting the mortgage business consistent with the
14 provisions of this chapter to perform any written
15 agreements or commitments."

16 SECTION 21. Section 454M-5, Hawaii Revised Statutes, is
17 amended by amending subsection (m) to read as follows:

18 "(m) Where this chapter requires [~~compliance with~~] a
19 person to comply with procedures, actions, standards,
20 disclosures, notices, format, content, or other requirements of
21 the Real Estate Settlement Procedures Act, the required



1 compliance applies to any person subject to this chapter,
2 whether or not the Real Estate Settlement Procedures Act applies
3 to that person or transaction."

4 SECTION 22. Section 454M-6, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) It shall be a violation of this chapter for any
7 mortgage servicer in the course of any mortgage loan transaction
8 to fail to comply with any:

9 (1) Applicable federal law or regulation related to
10 mortgage servicing, including but not limited to:

11 (A) The Real Estate Settlement Procedures Act,
12 including the mortgage loan servicing transfer,
13 escrow account administration, and borrower
14 request for information and error resolution
15 requirements;

16 (B) The Truth in Lending Act, title 15 United States
17 Code sections 1601 through 1667f, as amended, and
18 Regulation Z adopted thereunder, title 12 C.F.R.
19 part ~~[226-]~~ 1026, as amended; or

20 (C) Rules and regulations issued or administered by
21 the Consumer Financial Protection Bureau, and



1 interpretations of the rules by the Consumer
2 Financial Protection Bureau through interpretive
3 rules, bulletins, statements of policy, and
4 statements of guidance;

5 (2) Agreement with a governmental entity, agency, agent,
6 or regulator, or state attorney general that applies
7 to the mortgage servicer, including:

8 (A) A servicer participation agreement or other
9 agreement to participate in the Home Affordable
10 Modification Program or other Making Home
11 Affordable program;

12 (B) Home Affordable Modification Program rules,
13 including guidance provided by Making Home
14 Affordable program handbooks, and supplemental
15 directives; or

16 (C) The National Mortgage Settlement reached in 2012
17 by the federal government and forty-nine states,
18 with the five largest mortgage servicers in the
19 United States, to address mortgage servicing,
20 foreclosure, and bankruptcy abuses;



1 (3) Order of a court or government regulator that applies
2 to the mortgage servicer;

3 (4) Provision of this chapter or any rule adopted pursuant
4 to this chapter; or

5 (5) Federal or state law, rule, or regulation."

6 SECTION 23. Section 454M-8.5, Hawaii Revised Statutes, is
7 amended by amending subsection (c) to read as follows:

8 "(c) Each licensee or person subject to this chapter shall
9 provide to the commissioner upon request the books and records
10 relating to the operations of the licensee or person subject to
11 this chapter. The commissioner shall have access to the books
12 and records and shall be permitted to interview the officers,
13 principals, mortgage loan originators, employees, independent
14 contractors, agents, and customers of the [~~licensed mortgage~~
15 ~~loan originator~~] licensee or person subject to this chapter
16 concerning their business."

17 SECTION 24. Section 454M-10, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§454M-10 **Penalty.** Any person who violates any provision
20 of this chapter may be subject to an administrative fine of not
21 more than \$7,000 for each violation; provided that if the



1 aggregate fine amount exceeds \$7,000, \$1,000 of the aggregate
2 fine amount shall be deposited into the mortgage foreclosure
3 dispute resolution special fund established pursuant to section
4 667-86."

5 SECTION 25. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 26. This Act shall take effect on July 1, 2016.



Report Title:

Division of Financial Institutions; Mortgage Loan Originators;
Mortgage Servicers; Secure and Fair Enforcement for Mortgage
Licensing Act

Description:

Makes various amendments to the mortgage loan originators law, chapter 454F, Hawaii Revised Statutes, and the mortgage servicers law, chapter 454M, Hawaii Revised Statutes, by: increasing the clarity and consistency of the two chapters, which regulate related industries, including adding definitions and updating references to federal regulations; moving mortgage servicer provisions that currently appear in chapter 454F, Hawaii Revised Statutes, to chapter 454M, Hawaii Revised Statutes; and deleting the mortgage loan servicer loan modification license under chapter 454F, Hawaii Revised Statutes. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

